

UK Mail response to consultation on

“Licensing framework in a fully open market”

Section 2

- 2.6 Postcomm state that it is crucial to establish customer confidence to enable the development of competition but need to be wary that licensing a large number of typically small new operators (“mass licensing”) may have a negative impact on confidence unless customers are protected from rogue operators. Licensing must continue and must be properly enforced.
- 2.9 Postcomm may need to re-consider the exemptions currently allowed from needing to have a licence to provide certain mail services. The existing exemptions look to have some unintended consequences, e.g. carriers contracted to carry mail for a customer not needing a licence and the exemption on pre-paid letters (PSA 7(2)(h)). Specifically, operators providing upstream carriage for customers of downstream access to Royal Mail and operators that are owned/controlled by a mailing house should be required to have a licence. It would seem at the moment that both of these types of operator do not need to have a licence and any customers whose mail is carried by them do not benefit from any of the protections afforded by Postcomm’s licensing.
- 2.13 Postcomm should also consider and mitigate the risk of it having insufficient ability to swiftly revoke licenses.
- 2.14 In pursuit of its duty to promote competition, Postcomm should consider how the terms of the license issued to Royal Mail could include requirements that have the effect of Royal Mail losing market share.
- i) Yes

Section 3

- ii) Yes
- 3.5 In assessing the “fitness and propriety of an operator” Postcomm should take account of any past experience or record as an operator.
- 3.6 Postcomm should visit applicants to review their security procedures.
- iii) Yes, an assessment should be made and Postcomm should have flexibility in how the assessment is made (using experience gained from previous applicants). In addition, where the applicant has no experience in mail or a related area, the licence issued should include a formal review at 6 months (including a visit to inspect).
- 3.8 Applicants declaration should include anything relating to (for example) MoT Operator’s Licence, Health & Safety Executive and financial judgements (bankruptcy, CCJs).
- 3.9 Postcomm should consider the ownership of a company applying for a licence and the record or experience of the parent company.

- 3.10 Any unspent conviction under the Postal Services Act should be an absolute bar to gaining a licence.
- iv) Agree; however Postcomm must look at the company concerned and not just at the individuals.
- 3.13 Postcomm should require and take up financial references. Accounts and/or business plan should be required – accounts show a firm basis for trading and a business plan shows commitment.
- v) Postcomm has a responsibility to postal customers to protect them from ‘rogue operators’ and to maintain public confidence in postal services. Relying wholly on the due diligence of guarantors to ensure that applicants are financially stable seems to be inconsistent with that responsibility. The issue is not just protecting customers from the effects of licensee failure but protecting the reputation of postal services.

Requiring a guarantee seems to have been an effective approach in Postcomm’s licensing so far, though some difficulties in securing the necessary guarantee have been reported. In particular the open-ended nature of the currently required guarantee has been an issue with bank guarantors. Postcomm should how this could be addressed, e.g. by requiring a 3 year guarantee renewed annually and revised as appropriate given the trading level of the operator.

If changes to make obtaining a guarantee more practical can not be made, others regulators (including those established for “self regulation”) have approached this responsibility by requiring a bond from a licensee. A bond would might provide greater assurance than a guarantee (which may not be honoured by the guarantor if the terms are broken by the licensee) and demonstrate commitment from the licensee.

- vi) The application fee should be no lower than £1,000.
- vii) Agree. As most existing businesses applying to be mail operators will be ‘known in their market’, Postcomm could seek comment from trade associations or other industry bodies (instead of references from customers).

Section 4

- viii) Yes – but for this to be effective the licence must give Postcomm powers to act swiftly in revoking or suspending the licence.
- ix) A period of more than seven years (or more than three years notice after the initial period) would give greater business continuity and support investment. But Postcomm must have a clear power of earlier revocation in the event of major or persistent breach.
- x) License obligations may vary according to size but there must be some obligations even for ‘micro businesses’ (‘rouge operators’ are likely to be very small). Size should be based on turnover as it better reflects both the volume of mail handled and the prices charged (it is therefore a better indication of the scale of the licensee and the potential impact on customers of failure to comply with license obligations) Using employees as the measure of size imposes additional reporting burden and is also a complex and imprecise measure in the postal market where many operators use franchise and/or own drivers who are not “employees”.

- xi) Safeguards should include complaint handling and provision for mail to be delivered if the business fails (see v) above).
- 4.10 The requirement on the licensee should be to at least meet the industry standard set by the Code (the Code should set minimum standards as a 'safety net', not mandatory standards).
- xii) Yes a Code of Practice for Mail Integrity is required and the purposes and coverage proposed are correct.
 - xiii) Agree. Failure to disclose any relevant fact should be treated as aggravating circumstance.
- 4.19 As mentioned above, an option would be to require from each licensee a bond based on a % of the forecast turnover for the year ahead and paid into a Postcomm escrow account for use in contracting for delivery of mail if the licensee failed. If a mechanism could be found for Postcomm to decide which operator fulfilled the necessary mail delivery (e.g. the USO provider), the risk would be shared across licensees and the bond amount required from each licensee would be reduced (if the licensing process worked correctly, the risk of failure should be the same for each licensee!).

It would not be practical or appropriate to have an industry body operate a bond scheme as any body made up of operators would not have the expertise, capability or clear transparency to operate a scheme that would have major bearing on who could become licensed operators and at what cost.

- xiv) Agree – but Postcomm should continue to allow parent company guarantees where there was independent assessment of the financial strength of the parent company; this is standard commercial practice.
 - xv) Agree – but there should be a requirement that if a licensee gains a new contract that increases the size of its business by more than 50% it notifies Postcomm and increases the amount appropriately.
- 4.25 Postcomm must consider how performance information might be made available. If “available to anyone requesting it”, licensees will request it of each other and then use it in deliberately unfavourable comparisons. Given the variety of services that will be provided and differing levels of performance commitment to customers, it will be very difficult to make meaningful comparison between operators. (Postcomm should be mindful of the consumer distrust in the telecoms and energy markets caused by such ‘confusion marketing’)
- xvi) Agree – but see comment at 4.25
 - xvii) The principles of such an arrangement are valid but it may be very complex in operation and could be cited as discriminatory if they applied only to Royal Mail. This needs further consideration and analysis based on actual experience
 - xviii) The onerousness of these may differ according to size of operator but there must still be some minimal requirements for all licensees.
 - xix) Agree
 - xx) An annual license fee should be no barrier to any business with a true commitment to being a mail operator and intending to provide on-going services to customers.

£1,000 is a sensible amount as it requires a licensee to demonstrate commitment without it being a financial burden even for a small, local operator

- xxi) Agree
- xxii) The concern Postcomm is seeking to address is one of unfair, anti-competitive cross-subsidy from a protected or dominant business. That principle should apply regardless of whether the cross-subsidy is cross-border or not. Postcomm should consider whether the current licence requirements actually protect against this concern.
- xxiii) A Code of Practice on Common Operational Issues is required but should set mandatory minimum/default procedures not absolute requirements. Operators should be encouraged to reach bi- or multi-lateral agreements that ensure customers benefit from at least the minimum/default procedures.
The Code of Practice should be developed to include the Postal Address File (PAF), PO Boxes and Redirections

Section 5

- xxiv) Agree
- xxv) Postcomm (or Postwatch) should also monitor complaint handling (e.g. the % of complaints raised with Postwatch because of no satisfaction with response from licensee)
- xxvi) Agree
- xxvii) See xv)
- xxviii) Agree
- xxix) In the initial period of full market opening, to ensure customer confidence and protect the reputation of postal services, Postcomm may need to apply a degree of regulation seen by some as more than "light touch".

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